

United States Environmental Protection Agency
Criminal Investigation Division
Investigative Activity Report

Case Number

0506-0026

Case Title:

Ferguson Enterprises Inc.

Reporting Office:

Detroit, MI, Resident Office

Subject of Report:

Interview of [REDACTED] Contracts & Grants, DWSD.

Activity Date:

February 5, 2010

Reporting Official and Date:

[REDACTED] RAC

10-FEB-2010, Signed by: [REDACTED] RAC

Approving Official and Date:

[REDACTED] SAC

23-FEB-2010, Approved by: [REDACTED] ASAC

SYNOPSIS

02/05/2010 - U.S. EPA CID Special Agent (SA) [REDACTED] and FBI SA [REDACTED] interviewed [REDACTED] Detroit Water & Sewerage Department (DWSD) Contracts and Grants, regarding the contract DWSD 884A Security Upgrades which was awarded to DFT.

DETAILS

On February 4th and 5th, 2010, U.S. EPA CID Special Agent (SA) [REDACTED] and FBI SA [REDACTED] interviewed [REDACTED] Detroit Water & Sewerage Department (DWSD) Contracts and Grants, regarding the contract DWSD 884A Security Upgrades which was awarded to DFT. After being informed of the identity of the interviewing agents and the purpose of the interview, [REDACTED] provided the following information:

[REDACTED] DOB: [REDACTED]; SSN: [REDACTED] residence telephone: [REDACTED] cellular telephone: [REDACTED]. [REDACTED] has had this city issued cellular phone number since 1999. [REDACTED] has worked for the City of Detroit for approximately 25 years, the past 20 of which have been with the DWSD.

Contract 844A was overseen by [REDACTED] and was eventually awarded to DFT although Motor City Electric (MCE) won the evaluation process three times. [REDACTED] explained that MCE and the DWSD could not come to a negotiated agreement and this is why it was awarded to DFT.

SA [REDACTED] asked if one of the issues being negotiated was regarding the utilities which needed to be installed by a third party. [REDACTED] explained that an optical line was to be installed at the sites by AT&T. [REDACTED] learned from the DWSD staff that AT&T would be delayed in their installations and the security equipment installations would not be finished on time. The DWSD did not want to incur change orders from the winning bidder due to this delay and asked MCE to guarantee that they would not file any. MCE's position was that they would incur additional costs due to the delay and wanted an extra \$147,000 and six months extension to their deadline. DWSD agreed to this but wanted a guarantee that there would be no additional costs over the \$147,000. MCE said they could incur additional costs which could result in change orders.

[REDACTED] only makes recommendations to the DWSD Director, and stated that [REDACTED] cannot make decisions, only suggestions based on the issues at hand.

After DWSD negotiated with both DFT and MCE the two bids "basically ended up at the same amount." Then the DWSD engineering staff decided to eliminate certain items from the contract which resulted in DFT having a lower bid amount and the contract was awarded to them. [REDACTED]

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██████ of DCI, a partner in the DFT joint venture, signed a letter agreeing not to submit any change orders for the contract.

██████ is aware that there were two bid lettings for 844A but had no involvement in them. SA ██████ pointed out that there was a third bid letting for this contract and that this was the only one which included a deadline for completing the work. ██████ replied that all DWSD contracts have a deadline in them with the exception of legal services contracts. SA ██████ added that only the third bid had a deadline. ██████ explained that ██████ was the Manager for the Contracts & Grants group at the time of the first bid letting for 844A. ██████ was involved in all of the bids for this contract as well as the evaluation process.

██████ knows who ██████ is but has never spoken to ██████ regarding any contracts. ██████ commented that ██████ never talked to ██████ "at that level."

██████ agreed that the DWSD normally does not award contracts to the number two bidder, but did in this instance. ██████ added that "manipulation can take place with contracts." ██████ recalled that MCE was recommended as the winning bid twice by the evaluation committee. DWSD Director ██████ wanted it in writing that MCE would meet the contract deadlines and no change orders would be submitted. ██████ often spoke of this and did so prior to 844A coming up. ██████ clarified that ██████ would allow change orders for unforeseen conditions. There was nothing in writing from ██████ regarding the change orders.

██████ said ██████ is basically a pass thru for recommendations from the evaluation committee. ██████ talked to ██████ about the 844A Contract and it was ██████ who asked ██████ to negotiate with the number one and two bidders.

██████ reviewed a memo dated April of 2004 regarding the recommendation of the evaluation committee on 844A, including a handwritten note on the signature page. (See Attachment) ██████ explained that the language in the handwritten note was not something ██████ come up with on ██████ own. ██████ added that ██████ honestly can't remember why that note was written but ██████ wanted to say that ██████ and ██████ had a conversation. ██████ thought that the bid recommendation had not went to the Water Board at this point so the comment regarding it going against the "spirit of what the Board intend" does not make sense to ██████ adding they wouldn't know what the Board's intent. ██████ agreed to write out the note on a piece of paper for a handwriting comparison and did so at this point in the interview. SA ██████ and SA ██████ reviewed the two notes and agreed that the writing appeared to be the same. ██████ commented that ██████ would have had to have a conversation with ██████ if ██████ wrote the note.

██████ does recall ██████ asking ██████ if they could negotiate with two firms at the same time. ██████ told ██████ that the City of Detroit Purchasing Ordinance says that they are only to negotiate with the number one bidder, and can go to number two if the negotiations with the first bidder fall through. ██████ believes Deputy Director ██████ was present for this discussion. ██████ added that ██████ educated ██████ on the purchasing ordinance since ██████ came to the job from outside of the City of Detroit.

SA ██████ showed an email message dated 9/26/2003 between ██████ and ██████ secretary,

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██████████ in which ██████████ reminds Ferguson to call ██████████ and tell ██████████ that ██████████ is a part of the DFT bid. After reading this ██████████ said ██████████ can see how ██████████ manipulated ██████████ and the system. ██████████ went on to say that this was the first and only time the DWSD negotiated with two prime contractors at the same time on a contract. ██████████ doubts that ██████████ would have come up with this idea as ██████████ was a by the book kind of ██████████

██████████ does not know why the DWSD did not seek liquated damages for DFT's failure to complete the contract in a timely manner. ██████████ explained that it is up to the DWSD project manager to assess liquated damages and that they do not always do so.

SA ██████████ pointed out that in ██████████ text she tells ██████████ to call ██████████ and ██████████ about the DFT bid. ██████████ finds it very unusual that ██████████ would be contacted by a contractor to let ██████████ know of ██████████ involvement in a proposed contract. ██████████ does not recall who the DWSD field engineer was on this contract. The assigned field engineer is not known to the public until the bid book is released and the 9/23/03 text was likely prior to this.

SA ██████████ then asked about DWSD contracts CM 2014 and CM 2015. ██████████ recalled these contracts as ██████████ was contacted by ██████████ of the Detroit Human Rights Department regarding the Detroit Headquartered Business (DHB) certification for DLZ. ██████████ explained that DLZ, via their joint venture, was the number two bidder on the contract which meant that they were going to be awarded one of the two contracts. Someone from Human Rights called ██████████ and asked if they were evaluating contracts with a list of certain contractors, one of which was DLZ. ██████████ confirmed that they were and this person, which was possibly ██████████ told ██████████ not to complete the evaluation. A short while later received a letter from ██████████ which stripped DLZ of their DHB status. This resulted in their bid falling from number 2 to number 3 and thus they were not awarded either of the contracts.

██████████ also called ██████████ and told ██████████ not to finish the evaluation process for the North Oakland and Flint Loop contracts. Quite a while passed without ██████████ hearing back from ██████████ so ██████████ called to see if they could proceed with the evaluation and contract awarding. ██████████ did not specifically inquire about DLZ on these contracts and all of the bidders were certified by Human Rights. ██████████ informed ██████████ whenever someone from Human Rights called regarding bidders.

The DWSD requires DHB certifications to be filed with the bid packages. ██████████ to the ██████████ Mayoral Administration no one from Human Rights contacted DWSD regarding a bidder's certification. ██████████ added that the first time anyone from Human Rights contacted ██████████ to inquire into a bidders certifications was for CM 2014 and CM 2015. The procedure is for DWSD to contact Human Rights and that is only when there is a problem with a bidder's certification. After DLZ's DHB certification was stripped the DWSD staff often discussed what could have happened between DLZ and the Mayor's office, and the speculation was that there must have been an issue involving DLZ's campaign contributions.

On February 5, 2010, ██████████ met with SA ██████████ and SA ██████████ at the FBI offices in Detroit.

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█████ was asked about █████ testimony given in a deposition regarding the awarding of 844A. After reviewing a portion of the transcript from this deposition in which █████ stated that it was █████ suggestion to █████ to negotiate with both DFT and MCE, █████ commented that █████ must have misspoke during the deposition. █████ went on to say that it was clearly not █████ suggestion and it was █████ recommendation. █████ recalls having discussions with █████ on three or four occasions regarding the issue. During these discussions █████ voiced █████ desire to save time by negotiating with both firms and that █████ didn't want too much time to go by while negotiating with MCE, referencing the lag time which occurs when they follow the purchasing ordinance requirement to negotiate only with the top bidder. █████ often made suggestions to █████ in response to issues or concerns which came up in the bidding process but it "is always █████ decision" and that █████ doesn't have the authority to make such decisions. █████ is certain, based on these discussions, that █████ understood that this was not the normal process.

█████ denied ever telling the evaluation committee for 844A to hold up their evaluation process. █████ commented that there would be no reason for █████ to do so. █████ was the assigned manager from Contracts & Grants on this project and was the one who talked to the committee.

It was █████ who brought up the issue of the difference in the bid amounts for one particular line item. █████ recalled that for the one line item it was the committee's opinion that it should not cost as much as MCE had bid, and that there was a second line item the committee wanted deleted. All of this information was communicated to █████ by █████ The costs are scored against each other during both the evaluation and negotiation processes.

█████ still could not remember why █████ wrote the note on the April 2004 recommendation memo. █████ said that it might have come out of a conversation █████ had with █████ and █████ █████ has never written a note on a recommendation memo before and would have went back and re-written the memo instead of adding the handwritten comments. █████ thinks that █████ was asked to write something on the memo by either █████ or █████ If █████ didn't agree with the evaluation committee's recommendation █████ won't sign it, but would pass the memo along. While looking at the handwritten note █████ commented that █████ typically writes out █████ thoughts on a piece of paper and then types it and this is why this note may have been written.

█████ felt that MCE was low balling their bid in order to get the contract. █████ stated that it was █████ idea to negotiate with both firms. █████ feels that █████ phrased it inarticulately in the deposition, and that █████ likely adopted the thought as █████ own. It was █████ idea and █████ made the recommendation to go ahead with this approach. █████ asked █████ what they could do to save time in the negotiation process and asked if they could negotiate with both firms. █████ told █████ that it was not policy to do so but yes they can do it. Thus █████ recommended to █████ that they go ahead with that path. █████ may have been present during this conversation. At the time of the deposition █████ did not see the significance of this difference. █████ has given lots of depositions before and just didn't think it was it was significant and commented if you don't know the background of events going on at the time you wouldn't understand why it makes a difference whose idea it was.

█████ spoke to █████ on a daily basis. █████ was not as knowledgeable of purchasing requirements.

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██████ provided the agents with copies of letters sent to ██████ by ██████ regarding DLZ's DHB status. (See Attachment) ██████ was also served with a grand jury subpoena at this time.

Approximately an hour after the interview concluded ██████ contacted SA ██████ on ██████ cell phone, while SA ██████ was present. ██████ told SA ██████ that ██████ had been reviewing ██████ file and recalled that the bid package had went to the Water Board prior to the bid's issuance so the comment in the handwritten note on the April 2004 memo could have been correct.

ATTACHMENT

Human Rights Letters DLZ